INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	1
Date of the judgment and application for appeal	2
Cases believed to sustain jurisdiction	2
Substantial nature of Federal questions	3
Time of raising Federal questions	3
Exhibit "A"—Opinion of the Supreme Court of the State of Oklahoma	5

Table of Cases Cited.

Atlantic Coast Line v. *Goldsborough*, 232 U. S. 548	2
Keaton v *City of Oklahoma City et al.*, 93 Okla. App. 513, 102 Pac. (2d) 938	2
King v. *Augusta*, 277 U. S. 100	2
Lovell v. *Griffin*, 303 U. S. 444	2
New Orleans P. S. Co. v. *New Orleans*, 281 U. S. 682	2
Reinman v. *Little Rock*, 237 U. S. 171	2
Zucht v. *King*, 260 U. S. 174	2

Statutes Cited.

Act of February 13, 1925 (43 Stats. L. 936) amending and re-enacting Section 237(a) of the Judicial Code, as amended by the Act of January 31, 1928 (45 Stats. L. 54)	1
Ordinance No. 4475 of the City of Oklahoma City, adopted June 9, 1933	1

IN THE

SUPREME COURT OF THE STATE OF OKLAHOMA

No. 28,924

J. R. KEATON,

Plaintiff in Error,

vs.

CITY OF OKLAHOMA CITY, A MUNICIPAL CORPORATION, AND DAVON OIL COMPANY, A CORPORATION, SUCCESSOR TO HARRELL-DAVIS OIL COMPANY,

Defendants in Error.

JURISDICTIONAL STATEMENT.

1. The jurisdiction of the Supreme Court of the United States is invoked under the Acts of Congress of February 13, 1925 (43 Stats. L. 936) amending and re-enacting Section 237 (a) of the Judicial Code, and of January 31, 1928 (45 Stats. L. 54).

2. The statute of the State of Oklahoma the validity of which is involved is Ordinance No. 4475 of the City of Oklahoma City, adopted June 9, 1933 (a true and complete copy of which is Exhibit A to the amended petition), which assumed to extend the limits of the U-7 zone (or oil and gas district) so as to include parts of Riverside Park, separated only by a street sixty feet wide from petitioner's property consisting of nine lots on five of which valuable improve-

ments had been erected long prior to the passage of said Ordinance, both said Park and petitioner's property constituting part of Military Addition to Oklahoma City, a quarter section of land granted by the Congress of the United States to Oklahoma City in trust, among other things that no less than ten acres thereof should be set apart and used for the location of public buildings and for a public park. Prior to the adoption of said Ordinance No. 4475 on June 9, 1933, petitioner's property and said Riverside Park were in the U-4 use zone which is limited to buildings for industrial, wholesale and light manufacturing purposes and does not permit the drilling of oil and gas wells. Said Ordinance is not officially published, but as above stated a copy is Exhibit 4 to the amended petition.

3. The judgment sought to be reviewed was rendered by the Supreme Court of Oklahoma, the highest Court of the State in which a decision in the suit could be had, on April 30, 1940 (R. 122), the effective date of the decision having been postponed until the disposition of petitioner's petition for rehearing, which was denied on May 28, 1940. The opinion of the Oklahoma Supreme Court is not yet officially reported but appears in the advance opinions (Oklahoma Appellate Court Reporter, Vol. 93, p. 513) and in 102 Pac. (2d) 938. Petitioner's application for appeal is presented on the 8th day of August, 1940.

4. The nature of the case is set out in paragraph 2, *supra*. The cases believed to sustain the jurisdiction include:

Atlantic Coast Line v. *Goldsborough*, 232 U. S. 548;
Reinman v. *Little Rock*, 237 U. S. 171;
Zucht v. *King*, 260 U. S. 174;
King v. *Augusta*, 277 U. S. 100;
New Orleans P. S. Co. v. *New Orleans*, 281 U. S. 682;
Lovell v. *Griffin*, 303 U. S. 444.

5. The Federal questions involved are substantial. Petitioner's improvements on five of his lots cost him more than $70,000.00. One of his tenants, partly because of the oil drilling encroachment, became insolvent and quit business in November, 1934, and petitioner has been compelled to reduce 50 per cent the rentals derived from the improvements and has been compelled to keep four of his lots unimproved and unproductive, and is in danger of suffering much greater loss of value.

6. The Federal questions were raised in the court of first instance by the entire subject-matter of the amended petition and specifically by paragraphs 11, 13 and 14 thereof. Demurrers were filed thereto on the (first) ground, among others, that the amended petition fails to state facts sufficient to constitute a cause of action, upon which ground the demurrers were sustained; petitioner stood upon his amended petition, judgment was entered against him, he appealed to the Supreme Court of Oklahoma, his assignment of errors in that court being:

> "1. That the trial court erred in sustaining the first ground of the general demurrer interposed by the defendants to plaintiff's amended petition, challenging the sufficiency of said amended petition to state a cause of action.
>
> "2. That the trial court erred in dismissing plaintiff's amended petition and rendering judgment for the defendants.
>
> "3. That the trial court erred in failing to find and hold that the facts stated in plaintiff's amended petition are sufficient to constitute a cause of action."

The brief on said appeal pointed out that the eleventh paragraph of the amended petition charged that the operations of the defendants "constitute a taking of plaintiff's

property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States" and the fourteenth paragraph thereof charges that "the diversion of said tract to oil drilling and development not only caused plaintiff irreparable damage, but constituted a taking of his property without due process of law, in contravention of provisions of the State and Federal Constitutions." The entire brief is devoted to the argument of these contentions in their various aspects as applied to the instant case. This is also true of the reply brief wherein appears the specific statement, "It also deprives plaintiff of his property without due process of law." The same arguments run throughout the petition for rehearing, which petition was denied on May 28, 1940, without opinion.

7. A copy of the opinions delivered on rendering the judgment of April 30, 1940, is hereto appended.

Dated August 8, 1940.

WILLIAM C. SULLIVAN,
CHAS. HILL JOHNS,
KEATON, WELLS & JOHNSTON,
Attorneys for Appellant and Petitioner Herein.

EXHIBIT "A".

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 28,924.

J. R. KEATON, *Plaintiff in Error,*

vs.

THE CITY OF OKLAHOMA CITY, a Municipal Corporation, and DAVON OIL COMPANY, a Corporation,
Defendant in Error.

Syllabus.

1. By the enactment of Chapter 178, S. L. 1923 (Sec. 6170-6179 O. S. 1931), the State Legislature authorized municipalities to enact zoning ordinances, and when the legislative branch of the municipal government has acted in a particular case, its expressed judgment on the subject will not be overridden by the judiciary, unless the same is unreasonable, arbitrary, or constitutes an unequal exercise of police power.

2. Although the legislative body of a municipality may enact zoning ordinances, they are not precluded from amending, repealing or changing same in the future, where the growth and progress of the municipality require it or where it is for the general welfare of the municipality as a whole.

3. The insertion in a deed or grant of a parcel of land to a municipality, of the words, "that no less than ten acres of said reservation shall be set apart and used by said city for the location of public buildings, and for a public park," does not restrict the title of the municipality or prevent its leasing the property for the production of oil and gas, and the municipality has title, subject only to the abandonment of said property for the purpose set out in the inserted clause.

4. An adjoining landowner derives no rights against a municipality merely from dedication of nearby land as a park; such dedication being a declaration of public policy, which may be subject to change by the legislative body of the municipality, at any time such change is found to be necessary or to the best interest of the municipality.

Appeal from the District Court of Oklahoma County. Hon. Lucius Babcock, Judge.

Suit for Damages and injunction. Judgment for defendants, and plaintiff appeals.

Affirmed.

Keaton, Wells & Johnston, Charles Swindall, Charles Hill Johns, for Plaintiff in Error.

A. L. Jeffrey, Municipal Counselor. Leon Shipp, Asst. Municipal Counselor. For Defendant in Error, City of Oklahoma City.

Edward M. Box. For Defendant in Error. Davon Oil Company.

WELCH, *V. C. J.:*

This is a suit for damages, for cancellation of oil lease and for injunction, by J. R. Keaton, plaintiff, against The City of Oklahoma City, a municipal corporation, and Davon Oil Company, a corporation, defendants.

The trial court sustained the separate general demurrer of both the defendant city and the defendant, Davon Oil Company. The plaintiff elected to stand upon his amended petition and the trial court dismissed plaintiff's amended petition and rendered judgment for the defendants.

The plaintiff, Keaton, owned lots adjoining a tract owned by the city and designated as Riverside Park. In 1933 an ordinance of the City extended an oil drilling zone to include plaintiff's property and Riverside Park. Thereafter the city leased the park tract for oil development, and the lessee or assignee obtained proper permit to drill, as required by law, and immediately drilled wells on the park tract to production. Such wells had produced oil for some

years, or at least more than one year before this suit was filed. The plaintiff sought in a former action to prevent the execution of the oil lease and the granting of the permit to drill, but such effort did not succeed. See Oklahoma City *v.* Keaton, 178 Okla. 294, 62 Pac. (2d) 981.

The plaintiff by this action seeks to cancel the lease and to restrain further production from the oil wells and to recover damages. He avers damage to his property on account of the proximity thereto of the oil wells which produce bothersome odors and noises and increase fire hazards, and as his chief attack, questions the authority of the City to pass the zoning and authorizing ordinances and the validity thereof. The zoning ordinance here involved is the same ordinance No. 4475 mentioned in Oklahoma City *v.* Keaton, supra, and in Keaton *v.* Brown, 171 Okla. 38, 45 Pac. (2d) 109. Any hazard of the oil wells will be assumed to be covered by proper bond. It is so required by law.

The plaintiff here urges reversal on five grounds or propositions. The first three propositions were expressly presented and decided adversely in Keaton *v.* Brown, supra, Hubbard *v.* Oklahoma City, 177 Okla. 263, 58 Pac. (2d) 547, and Beveridge *v.* Harper Turner, 168 Okla. 609, 35 Pac. (2d) 435, and in other cases referred to in the above cited decisions. On account of the similarity of the questions here presented and the clarity of the above cited decisions on each question, we deem it not necessary to here discuss these propositions further. We must take it as settled by our many former decisions that the City, by proper legislation, and by the legislation here attacked, may authorize and regulate the drilling for oil in the city limits.

The plaintiff in his fourth proposition contends that the defendant, Oklahoma City, never acquired title in fee simple to any portion of the land included within the boundaries of said Riverside Park, hence had no legal authority to alienate same. But, even if it were conceded that the city acquired such title, still it had no legal authority to divert the use of any part thereof from park purposes to that of mining for the production of crude petroleum.

The reservation of title complained of is, "that no less than ten acres of said reservation shall be set apart and used

by said city for the location of public buildings, and for a public park."

We are of the opinion that although the conveyance contains the above use provision, it does not restrict the use of the land to that sole purpose, as is here contended. In Phillips Oil & Gas Co. *v.* Lingenfelter, 105 Atl. 888, 5 A. L. R. 1495, the court said:

> "The insertion in a deed of a parcel of land to a school district upon which to erect a schoolhouse of the words 'for school purposes only' does not restrict the title of the district or prevent its leasing the property for the production of oil and gas."

In Priddy *v.* School District No. 78, 92 Okla. 254, 219 Pac. 141, 39 A. L. R. 1334, we had under consideration a deed made to the school district, which deed contained the following provision: "As long as used for a school house site." In after years the school site was leased for oil and gas purposes by the school board and after oil was discovered the owner of the reversionary interest brought suit to recover damages by reason of the production of oil upon said property. We held that the deed conveyed fee simple title subject only to abandonment as a school site.

The plaintiff contends in his fifth proposition that he has a valuable vested property right in said park in the nature of an easement, of which right and interest he has been deprived by the alleged wrongful acts of the defendants. This contention may be answered by referring to Reichelderfer *v.* Quinn, 287 U. S. 315, 53 S. Ct. Rep. 177, which held that:

> "Landowners derived no rights against government merely from dedication of nearby land as park; such dedication being declaration of public policy, which same or succeeding congress might change by devoting land to other uses."

In the case of East Chicago *v.* City of East Chicago, 171 Inc. 654, 87 N. E. 17, the court said:

> "Owners of private property in the vicinity of a public square, whose means of ingress and egress

would not be destroyed or affected by a discontinuance of the use for public purpose, have no vested rights in its continued use as a public square, their losses being merely consequential and not direct, and its discontinuance would not be a taking of private property without compensation."

We find no error in the action of the trial court, and the judgment is affirmed.

Bayless, C. J., Osborn, Gibson and Davison, Concur.

Filed in Supreme Court of Oklahoma, April 30, 1940.
ANDY PAYNE, *Clerk.*

(9808)